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IN THE

Supreme Court of the United States

October Term, 1979

Docket No. 79-1353

ROBERT BOSCH, GmbH,

Petitioner,

v.

HELMUT A. PAPENDICK,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Delaware.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

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REASONS FOR DENYING THE WRIT.[1]

Robert Bosch GmbH's petition for a writ of certiorari presents a routine question of the application to particular facts of the legal principles concerning assertion of state court jurisdiction which have been developed at length by this Court in a series of recent opinions.[2] The opinion of the Delaware Supreme Court herein represents a diligent, thoughtful and patently correct application of these principles. It represents no extension of, departure from or conflict with any decision of this Court. No legally relevant purpose will be served by this Court's examination

1. Citations to materials in Bosch's petition and the opinions below set forth in its appendix will be made to the appropriate page number as follows: (Pet. —). The decision below is reported, *Papendick v. Robert Bosch GmbH*, 410 A. 2d 148 (Del. Supr. Ct. 1979).

2. *International Shoe Co. v. Washington*, 326 U. S. 310 (1945); *Shaffer v. Heitner*, 433 U. S. 186 (1977); *Kulko v. Superior Ct. of Calif.*, 436 U. S. 84 (1978); *McGee v. International Life Ins. Co.*, 355 U. S. 220 (1957); *Hanson v. Denckla*, 357 U. S. 235 (1958); *World-Wide Volkswagen Corp. v. Woodson*, — U. S. —, 100 S. Ct. 559 (1980) and *Rush v. Savchuk*, — U. S. —, 100 S. Ct. 571 (1980).

of either petitioner's quarrel with the factual findings upon which the Delaware Court premised its assertion of jurisdiction or its challenge to the legal principles carefully defined in recent decisions. The Petition should be denied.

FACTS.

The facts are simply stated. Plaintiff, a permanent U. S. resident, entered into a contract via the mails with Bosch GmbH, a West German entity, in which Bosch GmbH promised to pay him a "finder's fee" if it concluded an acquisition transaction with Borg-Warner Corporation, an American company. On the eve of entering into such acquisition transaction, Bosch GmbH caused a wholly-owned Delaware corporation, Bosch N. A., to be formed, "having for one of its explicit purposes the function of serving as a vehicle for the acquisition of the [Borg-Warner] stock" (Pet. 4a). It then assigned its acquisition rights with Borg-Warner to Bosch N. A. and provided it with the funds needed to complete the transaction. After his claim for fee was rejected by Bosch GmbH, plaintiff brought suit in Delaware against Bosch GmbH and Bosch N. A. Bosch N. A. was served in Delaware by summons delivered to its registered agent. Jurisdiction over Bosch GmbH was sought by attachment of its stock in Bosch N. A., a procedure authorized by Delaware statutes.[3] Upon these premises, none of which is disputed, the Delaware Supreme Court found:

3. In its petition Bosch GmbH repeatedly states that Delaware is attempting to assert *in personam* jurisdiction over it. Actually, until it entered its general appearance after remand below, the jurisdiction was *quasi in rem*. The error is not material. We agree that under *Shaffer v. Heitner, supra,* the standards to test the two different bases for jurisdiction are substantively the same, viz. "minimum contacts", although it surely can be argued that the creation of a subsidiary and the continued ownership of its stock provide a far greater "contact" with the jurisdiction than an isolated single transaction such as was found to support *in personam* jurisdiction in *McGee v. International Life Ins. Co., supra.*

> "That [Bosch GmbH's] ownership of [Bosch N. A.] stock was the result of [Bosch GmbH's] purposeful activity in Delaware *as an integral component* of its total transaction with [Borg-Warner] to which plaintiff's instant cause of action relates (Pet. 9a-10a)."

Upon this factual finding, the Delaware Supreme Court concluded that Bosch GmbH had sufficient "minimum contacts" with Delaware to support jurisdiction (Pet. 9a-11a). It buttressed its conclusion by testing it against *International Shoe's* "traditional notions of fair play and substantial justice" as restated in *Shaffer, supra,* and *Kulko, supra* (Pet. 11a-13a). Chief Justice Herrmann concluded that Delaware's assertion of jurisdiction over Bosch GmbH met all appropriate standards, especially when laid alongside the *only* alternative presented by petitioner—a duplicative prosecution in both West Germany and Delaware against a huge multi-national corporation and its wholly-owned subsidiary by plaintiff, an individual of limited means, arising out of a transaction which was almost entirely American in its nature and consequences (Pet. 12a-13a).

A. The Decision Below Does Not Conflict With Any Decision of This Court.

Petitioner contends that the decision below conflicts with *Shaffer v. Heitner, supra,* and the subsequently decided cases of *World-Wide Volkswagen Corp. v. Woodson, supra,* and *Rush v. Savchuk, supra.* However, upon analysis, petitioner's "conflict" is merely that the Court below reached a different conclusion from these cases based upon the different facts of this case.

A reading of Chief Justice Herrmann's opinion puts to rest any contention that the decision conflicts with *Shaffer.* The opinion carefully and at length considers

Shaffer and points out in meticulous detail the key differences which compelled the different result in the present case. Petitioner does not, nor can it, point to a single concept set out in *Shaffer* that was ignored or contravened, let alone demonstrate any disregard of its overriding principles.

Nor does petitioner point to any conflict between the decision below and *Rush v. Savchuk, supra.* A halfhearted stab is made, however, at asserting a conflict with *Rush's* companion case, *World-Wide Volkswagen Corp. v. Woodson, supra.* However, even a cursory analysis requires its rejection.

Woodson involved a claim of jurisdiction in Oklahoma over the New York-based distributors of an allegedly defective automobile who had "carr[ied] on no activity whatsoever in Oklahoma . . . and . . . avail[ed] themselves of none of the privileges and benefits of Oklahoma law" (100 S. Ct. at 566). In a suit for damages arising from injuries suffered when the car, sold to New Yorkers in New York, was "fortuitously" involved in an accident while transiting Oklahoma, this Court was called upon to test Oklahoma's claim of jurisdiction over the New York sellers. The assertion of Oklahoma jurisdiction over the party whose position is analogous to that of the present petitioner—the West German manufacturer of the automobile who had, presumably, purposefully caused similar cars to be sold in Oklahoma—was not deemed to be questionable enough to challenge in this Court. Mr. Justice White reviewed the teachings of the earlier decisions in a manner substantively parallel to that of Chief Justice Herrmann herein.[4] And he expressed his relevant conclusion in remarkably similar terms (100 S. Ct. at 567):

4. In the context of the particular question presented to him which involved suit against New York corporations, Mr. Justice White considered as a relevant test for assertion of a particular state court jurisdiction, a comparison with other jurisdictions within

> "When a corporation 'purposefully avails itself of the privilege of conducting activities within the forum State,' *Hanson v. Denckla, supra,* at 253, 78 S. Ct., at 1240, it has clear notice that it is subject to suit there. . . ."

Of course, the finding that no such purposeful activity by the *Woodson* defendants had occurred required dismissal of the action. Hence, given the difference in the crucial underlying facts, *Woodson* is totally consistent with the decision below.

B. Incorporating Bosch N. A. in Delaware Constitutes a Sufficient "Minimum Contact", and Defendant's Contrary Argument Represents an Unwarranted Extension of Existing Law.

Petitioner's second argument is based upon two propositions which are invalid on their face. Firstly, its contention that Bosch GmbH's contacts with Delaware were "only incidentally related" to the cause of action flies in the face of the Delaware court's finding, amply supported, that Bosch GmbH's purposeful activity in Delaware (the incorporation of Bosch N. A.) was an "*integral component* of its total transaction to which the cause of action relates" (Pet. 9a-10a) (emphasis added) and, as such, constituted the "minimum contact" with Delaware required by *International Shoe* and *Shaffer.*

4. (Cont'd.)
the "interstate judicial system", 100 S. Ct. at 564. In an effort to find shelter under this umbrella, petitioner hints at other potential American jurisdictions (Pet. 4, 7). However, in the court below, petitioner offered only West Germany as an alternative forum. In all events, Mr. Justice White's analysis in this respect is patently not directed at situations where the alternative jurisdiction is not one encompassed within "our federal system of government" (100 S. Ct. at 565). Cf. Concurring opinion of Mr. Justice Stevens in *Shaffer v. Heitner,* 433 U. S. at 218.

From this fallacious premise, petitioner leaps to the rather startling conclusion that *Shaffer* overruled or modified the apparent holding of *Hanson v. Denckla, supra,* that the commission of an "act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws" (357 U. S. at 253), provides a proper basis for jurisdiction over him. Suffice to say, this interpretation of *Shaffer* is fully refuted by *Woodson, supra,* where, as noted above, Mr. Justice White quoted with patent approval the very language of *Hanson v. Denckla, supra,* which petitioner says *Shaffer* overruled.

The unifying thread in *Hanson v. Denckla, Shaffer v. Heitner, Kulko v. California Superior Ct., World-Wide Volkswagen Corp. v. Woodson* and *Rush v. Savchuk,* is that in each of them the defendant had conducted no purposeful activity whatsoever within the forum state, let alone a purposeful act either integrally or, arguably, only incidentally related to the cause of action before the court. Where purposeful acts have occurred, jurisdiction has been upheld. See *e.g. International Shoe Co. v. Washington, supra, McGee v. International Life Ins. Co., supra,* and *Perkins v. Benguet Mining Co.,* 342 U. S. 437 (1952). Hence, acceptance of petitioner's position requires an unwarranted extension of existing law far beyond that enunciated in any prior decision of this Court.

C. There Is an Interest in Delaware, as Indeed, in Every State, in Affording a Remedy for Redress of Civil Wrongs.

Petitioner's third argument is based upon the alleged lack of an interest in Delaware, *qua* Delaware, in the resolution of this dispute. This contention ignores the proposition, recognized most recently in *Woodson,* 100 S. Ct. at 564, but implicit in *International Shoe* and all of its progeny, that every state has a distinct, viable interest in affording its citizens—and by extension under the equal protection clause, the citizens of other states—a forum for obtaining redress of civil wrongs. Granting a forum for such redress at the plaintiff's election is itself a compelling state interest, unless in the context of a particular controversy the defendant lacks "minimum contacts" with the jurisdiction so as to make the assertion of jurisdiction violative of traditional notions of fair play and substantial justice.

Petitioner's argument is merely an inversion of the contention expressly rejected in both *Shaffer* and *Kulko,* that the presence of some nebulous independent state interest, either in the applicability of its substantive law or a need to supervise institutions created under its laws, is sufficient to support jurisdiction even where minimum contacts with the defendant are lacking or fair play is violated. Petitioner necessarily urges this Court to forge a rule that even where, as here, "minimum contacts" are present and fair play and substantive justice support jurisdiction, jurisdiction must still be rejected unless some independent state interest in adjudicating the case is found. Thus, here too, petitioner is seeking from this Court an unwarranted and dubious extension of the authorities upon which it purports to rely.

D. Corporate Separateness or Identity Is Not in Issue Here.

That Bosch GmbH and Bosch N. A. may not be "alter egos" is beside the point, and no manner of semantic straining can turn this argument into an issue presented by this case. Respondent had never asked the court below to "pierce the corporate veil" *i.e.,* to equate Bosch N. A.'s

activities with those of Bosch GmbH, and the court below meticulously analyzed and relied upon Bosch GmbH's own activities in Delaware in reaching its conclusion. It is a misreading of the opinion below to suggest that jurisdiction over Bosch GmbH was based upon either Bosch N. A.'s jural existence in Delaware or the business which Bosch N. A. does there.

Indeed, the petition appears to have convoluted the concept upon which it relies. The issue of separate corporate identity generally arises in the context of an attempt to hold a parent liable for the activities of its subsidiaries—*e.g., Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U. S. 333 (1925). Here, both the underlying cause of action and the finding of jurisdiction are based upon the activities of the parent. The liability of the subsidiary is premised upon other principles of contract law. Far from merging the separate corporate existences of Bosch GmbH and Bosch N. A., both respondent and the court below carefully respected them.

In all events, there is nothing in the *Cannon Mfg. Co.* line of cases which suggests that state court factual determinations with respect to the separateness of parent-subsidiary corporate identity rises to the level of federal due process of concern to this Court. Indeed, the authority appears to the contrary.[5] Here also, petitioner seeks to have the Court plow new ground—by way of a case that does not even present the issue.

5. Indeed, one need go no further than the seminal decision, *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U. S. 333, 336 (1925): "No question of the constitutional powers of the state, or of the Federal government, is directly presented. . . . The question is simply whether the corporate separation, carefully maintained, must be ignored in determining the existence of jurisdiction." The *Cannon* facts are also easily distinguished—neither the parent nor the subsidiary corporation was of the forum state, so that the only claim of activity within the jurisdiction by the parent was by attribution to it of its subsidiary's activities.

CONCLUSION.

The decision of the Delaware Supreme Court herein represents a commendably conscientious and thoroughly rational effort to apply with meticulous care the well-thought-out directions of this Court as set forth in a recent series of landmark decisions. The success of this effort is manifest from the petition itself, which conjures up imaginary conflicts with existing authority and in reality asks the Court to extend the relevant holdings beyond their present limits, all in the face of the unassailable conclusion of the court below "that fairness and justice require jurisdiction to be asserted in Delaware under the totality of the circumstances of this case" (Pet. 12a).

The petition should be denied.

Respectfully submitted,

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